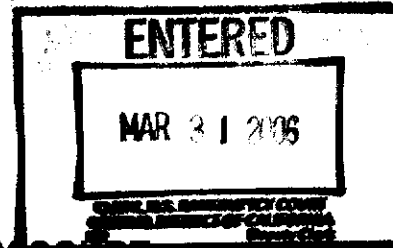
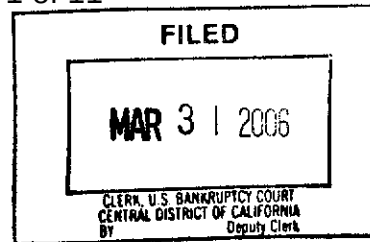


ORIGINAL



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:

JOSÉ SANDOVAL,

Debtor,

COMCAST OF LOS ANGELES, INC.,

Plaintiff,

vs.

JOSÉ SANDOVAL,

Defendant.

Case No. LA 05-24453-SB

Adv. No. LA-05-02196-SB

CHAPTER 7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AFTER TRIAL

DATE: December 8, 2005
TIME: 10:00 a.m.
CRTRM.:1575 (Roybal)

I. INTRODUCTION

Creditor Comcast of Los Angeles, Inc. ("Comcast") seeks a determination that its claim for statutory damages resulting from Debtor Jose Sandoval's alleged violations of anti-piracy and anti-signal theft laws under California Penal Code § 593d is a nondischargeable debt under § 523.¹

Sandoval, a subscriber to Comcast's basic cable service, was found with two cable converter boxes connected to his television sets, neither provided by Comcast, with hardwire alterations permitting him to decode all of Comcast's premium and Pay per View cable transmissions.

Following trial, the court finds that Comcast has not provided sufficient evidence to show a violation of the statute. The court further finds that Comcast has not presented sufficient evidence to establish a prima facie case that its claim for statutory damages is nondischargeable. Consequently, any debt owing to Comcast by reason of the cable boxes is discharged.

II. RELEVANT FACTS

There are two sets of facts relevant to this case – the facts presented at trial, and background facts about the operations of the cable television industry.

A. Facts of This Case

Comcast distributes television broadcast signals through a cable television system in parts of Los Angeles County, California. Comcast offers several different levels of cable service to its customers, including a "basic" level service or "standard" package and premium and Pay per View services. Sandoval had a subscription for the "basic" level of service from Comcast, Sandoval's cable television provider.

At trial, the only probative evidence presented by Comcast was a Security Field Observation Report ("field report") and a Converter Discrepancy Report ("discrepancy report"), which were admitted into evidence as records of regularly conducted activity.²

¹ Unless otherwise specified, all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (West 2005) and all rule references are to the Federal Rules of Bankruptcy Procedure.

² See FED. R. EVID. 803(6).

Comcast performed an inspection of the cable wires and equipment at Sandoval's residence, with his consent, on August 12, 2003. There Comcast found two grey Zenith cable television transmission converter boxes without serial numbers, one connected to a television set in Sandoval's living room, and the other connected to a television set in the back bedroom. The field report indicates that both converters were "clearly receiving all premium and pay per view channels. They were receiving (SHO-27) Real Men, (IN1-75) Just Married."

Sandoval voluntarily surrendered the converters to Comcast. Comcast's later office inspection revealed that both converters had "hardwire modifications."

B. The Cable Television Industry

Comcast presented no evidence on the nature or the technology of the cable television industry. Some information is available from other recently reported cases.

Cable television signals are transmitted through cable wiring from a cable television system provider's transmission center to its customer's television sets. Cable services offered include basic cable programming, premium programming (including movie channels such as HBO) and "Pay per View" programs. Cable television system providers encode or "scramble" the signals of the channels except for those in the basic service package. Basic service is provided at a monthly fee, premium services are provided for additional monthly fees, and Pay per View programming is sold by event. See generally, *CSC Holdings, Inc. v. Alberto*, 379 F. Supp. 2d 490, 491 (S.D.N.Y. 2005).

For each customer, a cable television provider installs a converter to unscramble the coded signals if the customer purchases service above the basic level. A service provider also attaches a filter to the cable lines to prevent a decoding device from descrambling any scrambled programs. Customers with unfiltered service levels may obtain "pirate" decoding devices to unscramble the scrambled signals, and thus to obtain higher levels of service without paying the additional fees. See *id.*

III. ANALYSIS

Comcast argues that Sandoval knowingly and willfully possessed, attached to its satellite television system, and used two unauthorized and illegally modified cable television decoder boxes to

1 view Comcast's scrambled premium and Pay per
2 View programming without authorization or proper
3 payment. By doing so, Comcast claims that
4 Sandoval committed six separate violations of
California Penal Code § 593d and that it is entitled
to monetary damages in the amount of \$30,000
under § 593d(f)(1).

5 Comcast further argues that the debt is
6 based on actual fraud, larceny, and conversion,
7 and thus is nondischargeable under §§
8 523(a)(2)(A), (4), and (6), respectively. The court
held a trial for Comcast to make a prima facie
case that the debt is owing and that it is
nondischargeable.

9 **A. VALIDITY AND AMOUNT OF THE CLAIM:
CALIFORNIA PENAL CODE § 593d**

10 We first examine whether, and to what
11 extent, Comcast has a claim under applicable
12 state law. A "claim" is defined in § 101(5) to
13 include a "right to payment, whether or not such
right is reduced to judgment, liquidated,
unliquidated, fixed, contingent, matured,
unmatured, disputed, undisputed, legal, equitable,
secured, or unsecured."

14 Non-bankruptcy law determines the
15 validity of a creditor's claim. See, e.g., *Grogan v.*
16 *Garner*, 498 U.S. 279, 283-84 (1991); *Cossu v.*
17 *Jefferson Pilot Sec. Corp. (In re Cossu)*, 410 F.3d
591, 595 (9th Cir. 2005). To the extent that
Comcast fails to prove a debt, there is no issue of
nondischargeability.

18 California Penal Code § 593d(a) provides
the state law rule governing possession and use of
19 unauthorized and unlawfully modified cable
television signal decoders.³ Section 593d(a)
states, in relevant part:

20 [A]ny person who, for the purpose
21 of intercepting, receiving, or using
22 any program or other service
carried by a multichannel video or
information services provider that
23 the person is not authorized by
that provider to receive or use,
24 commits any of the following acts
is guilty of a public offense:

25
26 ³There is also a federal statute imposing both
27 criminal and civil liability for the unauthorized
28 reception of cable service. See 47 U.S.C. § 553
(2006). This statute is not before the court
because Comcast does not bring any claim
thereunder.

(1) Knowingly and willfully makes
or maintains an unauthorized
connection or connections,
whether physically, electrically,
electronically, or inductively, to
any cable, wire, or other
component of a multichannel
video or information services
provider's system or to a cable,
wire or other media, or receiver
that is attached to a multichannel
video or information services
provider's system.

(2) Knowingly and willfully
purchases, possesses, attaches,
causes to be attached, assists
others in attaching, or maintains
the attachment of any
unauthorized device or devices to
any cable, wire, or other
component of a multichannel
video or information services
provider's system or to a cable,
wire or other media, or receiver
that is attached to a multichannel
video or information services
provider's system.

(3) Knowingly and willfully makes
or maintains any modification or
alteration to any device installed
with the authorization of a
multichannel video or information
services provider.

(4) Knowingly and willfully makes
or maintains any modifications or
alterations to an access device
that authorizes services or
knowingly and willfully obtains an
unauthorized access device and
uses the modified, altered, or
unauthorized access device to
obtain services from a
multichannel video or information
services provider.

For purposes of this section,
each purchase, possession,
connection, attachment, or
modification shall constitute a
separate violation of this section.

Section 593d(f) provides a civil remedy of \$5,000
or triple damages, whichever is greater, plus

1 reasonable attorney fees, against "[a]ny person
2 who violates this section." Comcast does not
contend that it suffered any actual damages as a
result of the violations.

3 There are four elements to a cause of
4 action under § 593d: (1) offending conduct, (2)
performed "knowingly and willfully," (3) done for a
5 specified unlawful purpose, (4) that caused
damage to the claimant.

6 **1. Offending Conduct**

7 Comcast contends that Sandoval engaged
8 in three kinds of offending conduct for each of the
two cable boxes, which resulted in six violations of
§ 593d. We now turn to an examination of the
9 evidence supporting each of these charges.

10 **a. Unauthorized Connection**

11 Section 593d(a)(1) prohibits unauthorized
connections to a cable provider's system. This
12 section is designed to prohibit the stealing of a
cable television signal by a person who is not a
13 customer of the provider.

14 There is no evidence that Sandoval made
any unauthorized connection to Comcast's cable
system, within the meaning of § 593d(a)(1).
15 Comcast admits that it authorized Sandoval's
connection to its cable system to receive
16 programming from Comcast. Thus, Comcast
authorized the connection of both television sets
17 to the decoders. In consequence, the evidence
does not support any claim for unauthorized
18 connection to Comcast's cable system.

19 **b. Possession of Unauthorized 20 Decoding Devices**

21 Section 593d(a)(2) makes it a violation to
possess any "unauthorized device" that is attached
22 to a cable provider's system. This provision is
designed to prohibit a legitimate cable service
23 customer from attaching any such device to the
customer's receiver system or to the cable system.
24 This statutory provision also applies to anyone who
purchases or attaches such a device for someone
25 else.

26 While Sandoval possessed the Zenith
converter boxes, there is no evidence before the
court that they were unauthorized. The field report
27 states only that these converters were "not issued
to the account" and that they "had hardwire
28 modifications." There is no evidence in the record
as to what equipment or devices Comcast has

authorized, either in general or for Sandoval in
particular. Furthermore, there is no evidence
whether such a Zenith converter box (in either the
modified or unmodified version) is on the list of
authorized devices.

The court is left totally uninformed as to
what boxes were authorized by Comcast in this
case, and whether the decoders found at
Sandoval's residence were or were not authorized.
The court finds that Comcast has not shown that
Sandoval possessed an unauthorized decoder
device.

c. Modification of Equipment Installed by Service Provider

Section 593d(a)(3) prohibits making or
maintaining any modification or alteration of any
device installed with the authorization of a service
provider. This provision is designed to cover a
consumer's modification of equipment provided or
authorized by the service provider.

The court's best guess is that this
provision does not apply to Sandoval, because he
did not have a modified or altered converter
provided by Comcast. Because Comcast has
failed to show what equipment or devices it
authorized Sandoval to use, the court cannot find
that either of the Zenith decoders was a "device
installed with the authorization" of Comcast.

Furthermore, the evidence admitted is
insufficient to determine whether the converters
here at issue were modified or altered in any
sense relevant to § 593d(a)(3). To be relevant,
the modification must be made for an improper
purpose, as discussed *infra*. The field observation
report only states that, "they had hardwire
modifications." However, this is a mere
conclusion. The report fails to specify any respect
in which the converters were improperly modified,
or the purpose of the modifications.

In consequence, the court cannot
determine whether the "modifications" were in fact
different from the state in which the converters
should have been, or whether the "modifications"
violated any rights of Comcast. Thus, the court
finds insufficient evidence to determine that there
was any relevant modification for the purposes of
§ 593d(a)(3).

The report also states that the Zenith
converters were "clearly receiving all premium and
pay per view channels." However, Comcast fails
to explain (at all) what was improper about such
reception.

The court assumes (with no evidentiary
support) that Comcast sends the same package of

1 programming to every customer, and that it
2 controls the level of service provided to a particular
3 customer through the converter box that it installs
4 at the customer's home. See, e.g., *CSC Holdings,*
5 *Inc. v. Kelly*, 374 F. Supp. 2d 303, 303 (E.D.N.Y.
6 2005) (describing role of converter in descrambling
7 signal and regulating type of service provided to a
8 customer). If this were not so, an altered
9 converter would provide no benefit to a customer.
10 In consequence, every converter installed for
11 every customer receives all of the signals, whether
12 covered by the customer's contract or not. It
13 would thus be altogether proper for Sandoval's
14 converters to receive all of Comcast's channels.

15 d. Use of Unauthorized of Modified Devices

16 Use of each of the Zenith converters may
17 in fact constitute a violation under § 593d(a)(4).
18 However, Comcast makes no contention that
19 Sandoval committed a violation of § 593d(a)(4).
20 Furthermore, Comcast has presented no evidence
21 that Sandoval actually used either of the cable
22 boxes.

23 2. "Knowingly & Willfully"

24 California case law gives us guidance in
25 interpreting the meaning of "knowingly and
26 willfully" in each subparagraph of § 593d. A
27 violation of this statute is a "general intent
28 offense." See *People v. Prevost*, 71 Cal. Rptr. 2d
487, 492 (Cal. App. 1998). This requires only that
the defendant knowingly and willfully engage in the
conduct, not that he have a specific intent to
engage in theft of cable services. *Id.*

Comcast altogether omits any reference to
the "knowingly and willfully" requirement. The
record is altogether lacking in any evidence that
Sandoval "knowingly and willfully" engaged in
improper conduct. There are only two items of
possibly relevant evidence. First, Sandoval signed
the voluntary surrender form and surrendered the
Zenith converters to agents for plaintiff when they
visited his residence. The debtor surrendered the
units immediately after agents of the plaintiff
"informed Jose that he was in violation of state and
federal laws and was given copies of such laws as
well as the public notice." Because the surrender
of the converter was made immediately after the
delivery to the debtor of these unsubstantiated
allegations, the court can draw no inference
adverse to the debtor from his voluntary surrender
of the converters.

The second item of evidence is that an
agent of Comcast asked Sandoval where he

obtained the "illegal" converters, and he stated, "I
bought them from some guy a while ago." The
evidence before the court does not disclose
exactly what question Comcast agent posed to the
debtor. The testimony of the inquiring agent could
have been helpful on this issue, but he did not
testify. The court treats Sandoval's response as
noncommittal with respect to any improper action.

The voluntary surrender form is likewise
unavailing to Comcast. Apart from the "voluntary
surrender" title of the document, it contains no
language that the court can conclude the debtor
adopted in signing the document.

The court concludes that there is no
credible evidence of any admission on the debtor's
part of any conduct that was a knowing and willful
violation of the statute.

3. Unlawful Purpose

Section 593d specifies that the offending
activity must be conducted "for the purpose of
intercepting, receiving, or using any program or
other service . . . that the person is not authorized
by that provider to receive or use . . ." Comcast
argues in its trial brief that the boxes in this case
were intentionally modified for the sole purpose of
perpetrating cable signal theft. However, the trial
record in this case is altogether lacking in any
evidence of the debtor's purpose in possessing the
altered cable boxes.

Comcast may have had no evidence as to
the debtor's specific purpose in possessing these
cable boxes. Nonetheless, Comcast could have
presented evidence that such alterations are
almost always made for this purpose, and perhaps
even that there is no other known purpose for such
alterations. See, e.g., *CSC Holdings v. Kelly*, 374
F. Supp. 2d 303, 305-06 (E.D.N.Y. 2005) (plaintiff
submitted affidavits showing that the "J Cube"
device had only one purpose, to intercept cable
television programming services); *CSC Holdings,*
Inc. v. Alberto, 379 F. Supp. 2d 490, 492 (S.D.N.Y.
2005) (same). But there is no such evidence in
the trial record in this case.

4. Damage

To prove a debt arising under § 593d,
Comcast must show that it was in fact damaged by
the debtor's conduct. Comcast makes no claim
for actual damages in any amount. It relies,
instead, entirely on its claim for statutory damages.

Comcast argues that Sandoval has
committed at least six violations of § 593d,
consisting of the possession, connection, and use

1 of each of the two allegedly unauthorized
2 converters taken from his residence. Comcast
3 argues that, because § 593d(f)(1) provides for
damages of \$5,000 per violation, it is entitled to
statutory damages of at least \$30,000.

4 However, § 593d(f) does not provide for
\$5,000 in statutory damages for each violation. It
5 only provides a single \$5,000 liability for "[a]ny
person who violates this section" *Accord*,
6 *Continental Cablevision, Inc. v. Poll*, 124 F.3d
1044, 1049 (9th Cir. 1997) (giving similar
7 interpretation to federal statute providing for
statutory damages).

8 Furthermore, we are constrained in the §
523 context by the rule that the exception to
9 dischargeability is construed strongly in favor of
the debtor and against the creditor. *See, e.g., Su*
10 *v. Carrillo (In re Su)*, 259 B.R. 909, 912 (B.A.P. 9th
Cir. 2001), *aff'd* 290 F.3d 1140 (9th Cir. 2002); *Riso*
11 *v. Snoke (In re Riso)*, 978 F.2d 1151, 1154 (9th
Cir. 1992); *Mandalay Resort Group v. Miller (In re*
12 *Miller)*, 310 B.R. 185, 193 (Bankr. C.D. Cal. 2004).
Comcast has only claimed that one person, Mr.
Sandoval, violated the statute.

13 The court finds that, for the purposes of §
523, § 593d(f) imposes only \$5,000 in statutory
14 damages on such a person, and does not impose
separate damage awards for each violation.
15 Accordingly, the court concludes that Sandoval
would owe only \$5,000 in statutory damages at
16 most, if Comcast had proven its § 593d claim.

17 B. DISCHARGEABILITY

18 Even if Comcast had a \$5000 statutory
claim against Sandoval, we could not find that the
19 claim is nondischargeable.

20 Comcast contends that the debt here at
issue is nondischargeable under §§ 523(a)(2), (4)
21 and (6). Any exceptions to the discharge under
these provisions must be construed narrowly in
22 favor of the debtor. *See, e.g., Su*, 259 B.R. at 912,
aff'd 290 F.3d 1140 (9th Cir. 2002); *Riso*, 978 F.2d
23 at 1154; *Miller*, 310 B.R. at 193. The
nondischargeable debts listed in § 523 are not
24 automatically excluded from the discharge. A
creditor must file an adversary proceeding under
25 strict time limits. *See* § 523(c)(1); Rule 4007.

26 A court may require a creditor to present
admissible evidence to make a prima facie case
27 that a debt qualifies for exclusion from the
discharge. *See, e.g., Citibank (South Dakota),*
N.A. v. Eashai (In re Eashai), 87 F.3d 1082, 1086-
28 87 (9th Cir. 1996); *Lu v. Liu (In re Liu)*, 282 B.R.
904, 907-08 (Bankr. C.D. Cal. 2002). The court
set a trial for this purpose, where it took testimony

and admitted documents. Sandoval did not
appear at the trial. The court now considers
whether Comcast has made its prima facie case
under any of these exceptions to discharge.

1. The § 523(a)(2)(A) Claim - Fraud

Section 523(a)(2)(A) provides, in relevant
part, that a debt for money, property, or services is
nondischargeable to the extent that it is obtained
by "false pretenses, a false representation, or
actual fraud⁴, other than a statement respecting
the debtor's or an insider's financial condition."
Under Ninth Circuit law, a creditor seeking to
establish the nondischargeability of a debt
resulting from actual fraud under § 523(a)(2)(A)
must establish:

- (1) a misrepresentation of fact by the debtor,
- (2) that the debtor knew at the time to be false,
- (3) that the debtor made with the intention of deceiving the creditor,
- (4) upon which the creditor relied, and
- (5) that was the proximate cause of damage to the creditor.

See, e.g., Field v. Mans, 516 U.S. 59 (1995);
Cossu, 410 F.3d at 596; *Eashai*, 87 F.3d at 1086;
Britton v. Price (In re Britton), 950 F.2d 602, 604
(9th Cir. 1991). In *Field*, the U.S. Supreme Court
added that any reliance must be justifiable. *See*
Field, 516 U.S. at 73-75. Each of these elements
must be proved (by a preponderance of the
evidence) in order for a creditor to prevail on a
claim of nondischargeability based on actual fraud.

Underlying each of these elements is the
requirement of a representation, oral or written,
made by the debtor. At trial, Comcast presented
no evidence whatsoever of any oral or written
representations made by Sandoval relevant to this
litigation. The only evidence offered was the
information contained in the field report and
discrepancy report. The discovery of the
unauthorized converters connected to the
televisions in Sandoval's home by itself does not
constitute a "representation" made by the debtor.
Because Comcast failed to prove that Sandoval

⁴ Under Ninth Circuit law, there is no separate
nondischargeability cause of action for false
pretenses or a false representation. To prevail
under § 523(a)(2)(A), the creditor must prove
actual fraud. *See, e.g., Miller*, 310 B.R. at 200-
02.

1 made any representation, true or false, Comcast
2 failed to make a prima facie case for actual fraud
under § 523(a)(2)(A).

3 Even if Comcast had successfully
4 established that Sandoval had made a
misrepresentation, Comcast has not proven the
5 remaining elements of actual fraud under §
6 523(a)(2)(A). In support of its contention that the
7 debt owing by Sandoval is based on fraud,
Comcast cites to *Electric Power board of*
8 *Chattanooga v. Holt* (In re Holt), 24 B.R. 215
9 (Bankr. E.D. Tenn. 1981), a case involving theft of
10 electrical service. In *Holt*, the bankruptcy court
11 found that the debtor was guilty of actual fraud and
12 that the debt arising from charges for electrical
services furnished to debtor's residence was thus
nondischargeable. The court noted that the
evidence indicated "a pattern of conduct by the
occupants of the residence in question to use
utility services from the Electric Power Board and
the Chattanooga Gas Company without paying for
them" and that the debtor "received the electrical
service knowing that it was stolen." *Id.* at 215-216.

13 In this case, the evidence presented by
14 Comcast does not indicate who occupied the
15 residence, any such pattern or conduct of theft, or
16 any knowledge on Sandoval's part that the
17 decoders were allowing him to receive
programming which he knew to be stolen.
Comcast has failed to establish each of the
elements required under § 523(a)(2)(A), and thus
cannot prevail on its claim of nondischargeability
based on actual fraud.

18 2. The § 523(a)(4) Claim - 19 Embezzlement or Larceny

20 Section 523(a)(4) excepts from an
21 individual debtor's discharge debts arising from
22 embezzlement or larceny.⁵ For purposes of §
23 523(a)(4), federal law (as opposed to state law)
24 governs the definition of embezzlement. *First Del.*
Life Ins. Co. v. Wada (In re Wada), 210 B.R. 572,
576-77 (B.A.P. 9th Cir. 1997). In the Ninth Circuit,
the elements of a claim based on embezzlement
are:

- 25 (1) property owned by another is
rightfully in the possession of the
debtor;
- 26 (2) debtor's appropriation of such
property to a use other than the

27 ⁵ Not relevant in this case, § 523(a)(4) also
28 excepts from discharge a debt resulting from
fraud or defalcation by a fiduciary.

- (3) use for which the property was
entrusted to debtor; and
circumstances indicating fraud.

Transamerica Commercial Fin. Corp. v. Littleton
(In re Littleton), 942 F.2d 551, 555 (9th Cir. 1991);
Wada, 210 B.R. at 576. The elements of a claim
based on larceny differ from the elements of
embezzlement only in that the larcenous debtor
takes possession of the property unlawfully. 4
COLLIER ON BANKRUPTCY § 523.10[2] (Alan N.
Resnick & Henry J. Sommer eds., 15th ed. rev.
2005).

Comcast argues that the debt qualifies for
the larceny exception to discharge under §
523(a)(4) because Sandoval unlawfully,
larcenously, and fraudulently intercepted, decoded
and viewed its scrambled premium and Pay per
View cable television transmissions. Comcast
does not contest that Sandoval properly received
Comcast's signals as a subscriber to its basic
programming package.

Comcast has offered no direct evidence
that Sandoval viewed any programs for which he
had not paid (or even that he viewed any programs
at all). Comcast asks the court to infer, from his
possession of equipment capable of decoding the
premium programs, that in fact he used the
equipment for this purpose. Comcast could have
installed software to monitor use of the cable box
to obtain this information, but it did not. Comcast
could have installed a filter to prevent Sandoval
from receiving transmissions of the premium
services, but it did not. Given the obligation to
construe the relevant discharge exceptions
strongly in Sandoval's favor, the court declines to
infer that Sandoval watched programs for which he
did not pay.

Indeed, the court cannot even infer that
Sandoval used the converters here at issue. The
record lacks any evidence whatever of who or how
many people inhabited the residence, or which (if
any) of them watched television programs. Given
the rule requiring strict application of the
nondischargeability provisions, the court declines
to make any such inference.

Furthermore, the evidence admitted at trial
is entirely devoid of information regarding the
channels that are included in the various
programming packages. The field report merely
states that the Zenith converters "were both clearly
receiving all premium and pay per view channels.
They were receiving (SHO-27) Real Men, (iN1-75)
Just Married." Comcast presents no evidence that
those channels or programs were included only in
its premium and Pay per View packages, and were

1 not included in Sandoval's subscription to
2 Comcast's basic package. Without knowing which
3 channels and programs are included in the various
4 packages, the court cannot determine that
5 Sandoval unlawfully received cable transmissions
6 to which he was not entitled. Because Comcast
7 has failed to prove unlawful appropriation of its
8 cable signals, Comcast has not established the
9 prima facie elements of larceny or embezzlement.

10 This is not to say that no debt for the theft
11 of cable services is dischargeable notwithstanding
12 § 523(a)(4). Indeed, the court assumes that a
13 properly proven theft of cable services charge
14 would qualify under § 523(a)(4), at least as to the
15 actual damages shown. If Comcast had
16 successfully established the offensive conduct
17 element of a cause of action under § 593d, that
18 may have been sufficient to show that he
19 unlawfully received programming for which he had
20 not paid, this would constitute larceny, and that the
21 resulting damages would be nondischargeable.
22 Because Comcast has not proven a debt owing
23 under the law against the theft of cable signals, it
24 cannot prevail under § 523(a)(4).

25 3. The § 523(a)(6) Claim - Willful 26 and Malicious Injury

27 Comcast further claims that the debt owed
28 is based on conversion, and thus is
nondischargeable under § 523(a)(6). Section
523(a)(6) excepts from discharge debts "for willful
and malicious injury by the debtor to another entity
or to the property of another entity." Conversion is
covered by this statutory language. See *Del Bino*
v. Bailey (*In re Bailey*), 197 F.3d 997, 1000 (9th Cir.
1999); *Littleton*, 942 F.2d at 554.

Although bankruptcy law determines the
dischargeability of debts, courts look to state law to
determine whether a conversion has in fact
occurred. *Jercich v. Petralia* (*In re Jercich*), 238
F.3d 1202, 1206 (9th Cir. 2001); *Bailey*, 197 F.3d at
1000. Under California law, "a conversion is not
per se a willful and malicious injury to the property
of another." *Peklar v. Ikerd* (*In re Peklar*), 260
F.3d 1035, 1037 (9th Cir. 2001); see *id.* at 1039
("[a] judgment for conversion under California
substantive law decides only that the defendant
has engaged in the 'wrongful exercise of dominion'
over the personal property of the plaintiff. It does
not necessarily decide that the defendant has
caused 'willful and malicious injury' within the
meaning of § 523(a)(6)"). Consequently, to prevail
on its claim of nondischargeability, Comcast must
first establish that a conversion has occurred

under California law, and second that the
conversion is willful and malicious.

a. Conversion under California Law

Under California law, conversion is defined
as "the wrongful exercise of dominion over the
personal property of another." *Id.* at 1037; *Taylor*
v. Forte Hotels Int'l, 235 Cal. App. 3d 1119, 1124
(1991). More specifically, conversion includes:

any act of dominion wrongfully
asserted over another's personal
property in denial of or
inconsistent with his rights
therein. It is not necessary that
there be a manual taking of the
property; it is only necessary to
show an assumption of control or
ownership over the property, or
that the alleged converter has
applied the property to his own
use.

Bailey, 197 F.3d at 1000; *Igaue v. Howard*, 249
P.2d 558, 561 (Cal. Ct. App. 1952); see *Farmers*
Ins. Exch. v. Zerlin, 61 Cal. Rptr. 2d 707, 709
(1997) ("the elements of a conversion are the
creditor's ownership or right to possession of the
property at the time of the conversion; the debtor's
conversion by a wrongful act or disposition of
property rights; and damages.").

Comcast presented no evidence at trial to
show that Sandoval in fact converted its cable
transmissions. The field report indicates that
Sandoval was entitled to receive Comcast's
signals as a subscriber to its basic programming
package. There is no evidence regarding which
channels were included in the programming
packages for which Sandoval had paid.
Consequently, the court cannot determine which
channels Sandoval was entitled to receive or that
Sandoval wrongfully asserted dominion over
Comcast's signal transmissions by possessing
descramblers which allowed him to view premium
and Pay per View programming. Comcast has not
sufficiently established that Sandoval's treatment
of its signals constituted conversion as defined
under California law.

b. "Willful and Malicious"

Once it is established that a conversion
did in fact occur, a determination of
nondischargeability under § 523(a)(6) requires that

1 Comcast prove that the conversion was both willful
and malicious.

2 Under § 523(a)(6), the willfulness element
3 requires that the debtor intended the
consequences of his action, and not just the action
4 itself. *Kawaauhau v. Geiger*, 523 U.S. 57, 61
(1998); *Thiara v. Spycher Bros. (In re Thiara)*, 285
5 B.R. 420, 427 (B.A.P. 9th Cir. 2002). An injury is
willful when it is shown either that the debtor had
6 a subjective motive to inflict the injury or that the
debtor believed that injury was substantially certain
7 to result from his conduct. See *Su*, 290 F.3d at
1142-46.

8 The injury inflicted by the debtor must also
be "malicious," which requires that the debtor
9 intentionally perform a wrongful act which
necessarily causes injury and which is done
without cause or excuse. *Id.* at 1146-47. Although
10 malice may be inferred from the act, it must first be
established that the conversion was a "willful"
11 injury. *Littleton*, 942 F.2d at 554; *Thiara*, 285 B.R.
at 434. Under Ninth Circuit law, willfulness and
12 malice are two distinct elements that must not be
conflated. See *Su*, 290 F.3d at 1146.

13 Based on the minimal evidence presented
at trial, Comcast has failed establish that
14 Sandoval's treatment of its signals constituted
conversion as it is defined under California law. In
the Ninth Circuit, "a failure to prove conversion is
15 fatal to an argument that defendant's conduct
caused 'willful and malicious injury.'" *Peklar*, 260
16 F.3d at 1038. Because Comcast has not
sufficiently proved that it suffered injury due to any
17 conversion by Sandoval, Comcast cannot satisfy
the willful and malicious prongs of the test for
18 nondischargeability under § 523(a)(6). The
evidence does not support a finding of such willful
19 and malicious injury.

20 Furthermore, even if Comcast
successfully established that a conversion of its
21 cable transmissions did in fact occur, it is not clear
whether an award of statutory damages under
22 California Penal Code § 593d supports a claim for
willful and malicious injury. Although Comcast
23 cites to *CSC Holdings, Inc. v. Feiner (In re Feiner)*,
254 B.R. 266 (Bankr. D. Kan. 2000), as a case
24 exactly on point dealing with the discharge
exception for willful and malicious injury and
25 statutory damages arising from cable piracy and
use of a cable television descrambler, the
26 damages at issue in that case were awarded
pursuant to a federal anti-cable signal theft law. In
27 a prior proceeding, a district court had found that
the debtor had violated § 553(1) of the
28 Communications Act, which states:

No person shall intercept or
receive or assist in intercepting or
receiving any communications
service offered over a cable
system, unless specifically
authorized to do so by a cable
operator or as may otherwise be
specifically authorized by law.

47 U.S.C § 553(1) (2006). Based on the testimony
and evidence presented, the district court found
that Feiner intercepted or received pay per view
service over CSC's cable system, without
authorization, and without paying for the service.
Feiner, 254 B.R. at 270. The bankruptcy court
gave preclusive effect to the district court's
findings and noted that

[t]he issues of Feiner's use of the
descrambler without justification
or excuse, with intent to receive
service without paying for it, and
with knowledge that he had no
authorization from CSC and was
thus stealing from CSC, are all
issues that were actually and
necessarily litigated in the District
Court action.

Id. at 271. Thus, the bankruptcy court declined to
relitigate the issues of Feiner's intent, knowledge,
and unauthorized use of the descrambler, and
found the debt owing to CSC was
nondischargeable under § 523(a)(6). *Id.* at 271,
273. Rather than finding that all violations of §
553(1) of the Communications Act constitute willful
and malicious injury, the bankruptcy court relied on
the district court's factual findings in determining
the nondischargeability of the debt. This court,
unlike the bankruptcy court in *Feiner*, does not
have the benefit of such findings of fact and has
not been presented with any evidence whatsoever
sufficient to support a finding of
nondischargeability for willful or malicious injury for
all violations of § 593d or specifically with respect
to Sandoval's alleged conduct.

1 Although § 593d allows for concurrent
2 criminal and civil remedies, no existing case law
3 establishes that violations of this state anti-piracy
4 and anti-signal theft law constitute willful and
5 malicious injury under § 523(a)(6). On its face, §
6 593d(a) describes acts performed "knowingly and
7 willfully," in violation of the statute. See §
8 593d(a)(1)-(4). Comcast has failed to establish
9 whether this language meets the willfulness
10 requirement of § 523(a)(6), that the debtor
11 intended the consequences of his action, and not
12 just the action itself. See *Geiger*, 523 U.S. at 61;
13 *Thiara*, 285 B.R. at 427.

14 Comcast has also failed to address
15 whether statutory damages awarded under §
16 593d(f) meet the "malicious" requirement, a
17 distinct element that must be satisfied for a debt to
18 be determined nondischargeable under §
19 523(a)(6). See *Su*, 290 F.3d at 1146. The court
20 concludes that Comcast has not shown that any
21 statutory damages owing by Sandoval is a
22 nondischargeable debt under § 523(a)(6).

23 Entirely apart from the California statute,
24 Comcast could present evidence that Sandoval's
25 conduct was willful and malicious. However,
26 Comcast has failed to present any such evidence.
27 In particular, Comcast's total failure to present any
28 evidence of damages apart from statutory
damages requires it to rely on the statutory
violation for its damage claim. However, Comcast
has failed to show that its statutory damages result
from willful and malicious conduct on Sandoval's
part.

18 IV. CONCLUSION

19 Comcast has not established that it is
20 owed any statutory damages resulting from
21 Sandoval's alleged violations of anti-signal theft
22 laws under California Penal Code § 593d. Even if
23 Comcast had proven such damages, it has failed
24 to show that such damages qualify for exception to
25 discharge under § 523(a)(2)(A), (4), or (6). The
26 court concludes that Comcast is not entitled to a
27 judgment in its favor, and that the adversary
28 proceeding must be dismissed.

DATED: March 31, 2006

25
26
27
28


Samuel L. Bufford
United States Bankruptcy Judge

CERTIFICATE OF MAILING

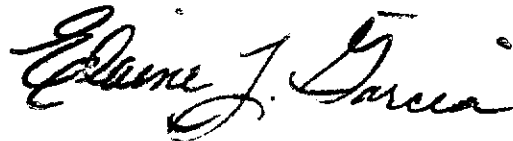
I certify that a true copy of this **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
AFTER TRIAL was mailed on **MAR 31 2006** to the parties listed below:

U.S. Trustee's Office
725 So. Figueroa St., Suite 2600
Los Angeles, CA 90017

Anthony E. Bell, Esq.
700 S. Flower St., Suite 1100
Los Angeles, CA 90017-4113

Jose Sandoval
1029 1/2 Osage Ave Apt 7
Inglewood, CA 90301

DATED: **MAR 31 2006**



DEPUTY CLERK